UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,726	02/09/2004	Bartholomaus Kellerer	P2001,0567	9207

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LERNER GREENBERG STEMER LLP
P O BOX 2480
HOLLYWOOD, FL 33022-2480

EXAMINER
KEEFER, MICHAEL E

ART UNIT	PAPER NUMBER
2154	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	**Applicant(s)**
Office Action Summary	10/774,726	KELLERER ET AL.
	Examiner	**Art Unit**
	Michael E. Keefer	2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>09 February 2004</u>.

2a)☐ This action is **FINAL.**   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-23</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-23</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>09 February 2004</u> is/are: a)☐ accepted or b)☒ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☒ All   b)☐ Some *   c)☐ None of:

      1.☒ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>5/7/2004</u>.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.   This Office Action is responsive to the Application filed 2/9/2004.

Priority

2.   Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which

papers have been placed of record in the file.

Drawings

3.   Figures 1-2 should be designated by a legend such as --Prior Art-- because only

that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in

compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid

abandonment of the application. The replacement sheet(s) should be labeled

"Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct

any portion of the drawing figures. If the changes are not accepted by the examiner, the

applicant will be notified and informed of any required corrective action in the next Office

action. The objection to the drawings will not be held in abeyance.

4.   The drawings are objected to under 37 CFR 1.83(a). The drawings must show

every feature of the invention specified in the claims. Therefore, the "functions for

increasing availibility" in claim 1, address translation in claim 6, the routing of alarm and

event messages as described in claim 7, and "redundant timers" as described in claim 8

must be shown or the feature(s) canceled from the claim(s). No new matter should be

entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in

reply to the Office action to avoid abandonment of the application. Any amended

replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

5.   The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6.   Claims 1 and 12-13 are rejected under 35 U.S.C. 112, first paragraph, for having undue breadth. A single means claim, i.e., where a means recitation does not appear in combination with another recited element of means, is subject to an undue breadth rejection under 35 U.S.C. 112, first paragraph. In re Hyatt, 708 F.2d 712, 714-715, 218 USPQ 195, 197 (Fed. Cir. 1983) (A single means claim which covered every conceivable means for achieving the stated purpose was held nonenabling for the

scope of the claim because the specification disclosed at most only those means known to the inventor.). Claims 2-11 and 14-23 are dependent from claims 1 and 13 and thus are rejected for the same.

7.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8.   Claims 1, 8, 10, 12, 13, 20, and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1 and 12-13 the phrase "providing functions for increasing availability" is indefinite as it is unclear by how much availability is to be increased. (I.e. it is a relative term)

Regarding claims 8 and 20, it is unclear what the function of providing timer objects is, additionally it is unclear whether the timer objects are copies of timers resident on the second data processing apparatus, or whether they are timers that are timing operations taking place at the second data apparatus.

Regarding claims 10 and 22, it is unclear how the means for terminating functions for increasing availability can be accomplished by coupling with a device that cannot be addressed, furthermore, if the device cannot be addressed it is unclear how it could be coupled with in the first place. The Examiner is interpreting these claims to be indicating that the coupling is terminating when the monitoring indicates that the second device is not working (i.e. addressable).

Claim Rejections - 35 USC § 102

9.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10.   Claims 1-3, 9-10, 12-15, and 21-22 are rejected under 35 U.S.C. 102(b) as being

anticipated by Modiri et al. (US 6192401).

Regarding **claims 1 and 12-13**, Modiri discloses:

Coupling means for increasing availability between nodes on an IP

network (i.e. nodes that are not identified in the network). (Abstract teaches

cluster management software running on a plurality of computers which performs

various duties that increase the availability of services on the network by

controlling the clustering of the computers. Modiri clearly implies that the

computers can be on an IP network in Col. 5 lines 21-32 by listing internet

services as services that can be provided, which use the IP.)

Regarding **claims 2 and 14**, Modiri discloses:

The means for increasing availability are provided automatically. (Col. 4

lines 50-66 disclose that the monitoring of a keep alive signal is done

automatically.)

Regarding **claims 3 and 15**, Modiri discloses:

The means being set up such that functions for increasing availibilty can

be administered from another node. (Col. 5 lines 34-50 discloses a remote

cluster management system.)

Regarding **claims 9 and 21**, Modiri discloses:

Monitoring addressability of at least one of the other nodes. (Col. 4 lines

50-66 discloses the monitoring of communications integrity.)

Regarding **claims 10 and 22**, Modiri discloses:

Terminating functions for increasing availability when a node becomes

unavailable. (Col. 4 lines 50-67 disclose stopping communications to a failed

node and making a new connection to another node (i.e. failover).)

Claim Rejections - 35 USC § 103

11.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

12.   Claims 4 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Modiri as applied to claims 1 and 13 above, and further in view of Chung et al. (US

6195760), hereafter Chung.

Modiri discloses all the limitations of claims 4 and 16 except for replicating

memory.

The general concept of replicating memory is well known in the art as taught by

Chung. (Abstract, and Fig. 2 show the storage of the same files in multiple memories.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Modiri and the general concept of replicating memory as taught by Chung in order to make backup copies of essential files.

13.   Claims 5 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Modiri as applied to claims 1 and 13 above, and further in view of White et al. (US 2003/0023740), hereafter White.

Modiri discloses all the limitations of claims 5 and 17 except for parallel processing.

The general concept of running the same task on parallel nodes and checking the results is well known in the art as taught by White. ([0011] teaches running the same calculations on coupled identical devices and checking the results against each other.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Modiri and the general concept of running the same task on parallel nodes and checking the results as taught by White in order to ensure that hardware and software is still properly functioning on all nodes.

14.   Claims 6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Modiri as applied to claims 1 and 13 above, and further in view of Funaya (US 5778186).

Modiri discloses all the limitations of claims 6 and 18 except for translating between physical and logical addresses.

The general concept of translating between physical and logical addresses is well known in the art as taught by Funaya. (Fig. 43, S8 teaches translating between physical and logical addresses.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Modiri with the general concept of translating between physical and logical addresses as taught by Funaya in order to make the system more flexible.

15. Claims 7 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Modiri as applied to claims 1 and 13 above, and further in view of Lean et al. (US 2003/0105850), hereafter Lean.

Modiri discloses all the limitations of claims 7 and 19 except for alarm and event messages being routed to a central place to facilitate countermeasures.

The general concept of providing an alarm or event aggregation server for a cluster is well known in the art as taught by Lean. ([0147] discloses that all alarm messages in the cluster go to alarm server 118)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Modiri with the general concept of providing an alarm or event aggregation server for a cluster as taught by Lean in order to allow the administrator visibility into errors occurring within the cluster.

16. Claims 8 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Modiri as applied to claims 1 and 13 above, and further in view of Lee et al. (US 5774479), hereafter Lee.

Modiri discloses all the limitations of claims 8 and 20 except for timers being provided regarding the second node.

The general concept of providing timers in a network system is well known in the art as taught by Lee. (Col. 8 lines 4-10 teach the use of multiple timers to time-out communications failures.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Modiri with the general concept of providing timers in a network system as taught by Lee in order to provide a more versatile method of determining connectivity failures.

17.   Claims 11 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Modiri as applied to claims 1 and 13 above, and further in view of Davis et al. (US 6282712), hereafter Davis.

Modiri discloses all the limitations of claims 11 and 23 except for automatically installing software over the network.

The general concept of installing software to a node over the network is well known in the art as taught by Davis. (Col 11 line 56 - Col. 12 line 8 teach the installation of software on a server via the network automatically.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Modiri with the general concept of installing software to a node over the network as taught by Davis in order to provide management updates to nodes in the network.

Conclusion

18.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure. US 6330605 teaches that a node can be a member of more than

one cluster..

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Michael E. Keefer whose telephone number is (571)

270-1591. The examiner can normally be reached on Monday through Friday 9am-

5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Nathan Flynn can be reached on (571) 272-1915. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

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MEK 9/21/2007